2: Krige and Krige E-5 (1928-1939)1943
FX14 Lovedu FX14

confidence in the *khoro* and its methods, but some men increasingly resort to a mixture of the supernatural, the 'sending back' of the evil, and the processes of the European courts.

'Blood' cases and disobedience to tribal authorities, as well as witchcraft, are dealt with by procedures essentially different from those so far described. Homicide, especially accidental killing (*gozi*), is usually restituted by *ku khumithwa* and by converting the criminal to a kinsman, without the intervention of the *khoro* or payment to the queen. But other procedures were also used: a murderer might be killed in the heat of the moment by a relative of the victim, and in such a case that ended the matter; or he might be executed by order of the queen unless he could escape to one of the recognized sanctuaries in the country; or he might be dealt with as a witch. Homicide in its manifold aspects is too large a subject for treatment here, but since it is, in regard to aspects of law dealt with in this book, adequately illuminated by our next subject, viz. procedure in 'blood' cases, we may content ourselves with the remark that homicide apparently did not involve a *khoro* trial.

'Blood' cases to-day present a curious mixture of different procedures of the past. One old element of the procedure, being incongruous with the disapproval of self-help, has completely disappeared. Old men told us that 'blood' cases were settled by the kin, not submitted to the *khoro*. That, but no doubt also the reluctance to appeal to the European, to-day explains the emphasis on reconciliation and the encouragement of *ku khumithwa* in these cases. If a 'blood' case comes to the *khoro*, the victim gets nothing and the assaulter pays heavily; if the matter is privately settled, the victim gets something and the assaulter pays less. In the old days, if private settlement failed, the kin of the victim went to attack the assaulter's village: they reported to the queen, but she exacted no fine if in the attack a man was killed. Though this method of execution is unknown to-day, it is still said that a man who kills an aggressor pays nothing, not even to the queen, for 'He who dies on the road is not to be cried for. Let the aggressor kill himself' (*mufo-dzilwi a u lithi, mulala u ibolaki*). This precept is also invoked to justify 'revenge' by means of medicines, but here, as in the case of aggression, it is regarded as self-defence, not self-help, just as killing an adulterer caught in the act—in which case also no blood-money is paid, even to the queen—is thought of as killing a thieving dog. These conceptions leave intact the aversion from vengeance: there is no blood revenge, no vendetta, no trace of the *lex talionis*, though a limb for a limb is known not very far off. Self-help, even in cases where it is admitted among tribes with more highly developed legal institutions, is frowned upon: one may neither kill a pig of another that damages one's crops nor drive cattle that have entered one's gardens into the fields of their owner. A man, provoked or assaulted by another, has no right to retaliate; and it is doubted whether the provocation will mitigate his offence, for no man may take the law in his own hands. Phedulí's relative had been killed by Magwale's sorcery, and in anger Phedulí struck Magwale's cow, which subsequently went lame; yet he was ordered by the *khoro* to pay the usual compensation.

How has the old procedure merged with the new conceptions? We

2: Krige and Krige E-5 (1928-1939)1943
FX14 Lovedu FX14

692 can give only part of the answer. The exaggerated abhorrence of self-
●682 help and the insistence upon *ku khumelwa*, side by side with the
627 tendency to regard blood as belonging to the queen (phrased as 'the head belongs to the chief'), has not driven the old procedures wholly out of the field. Old men say that 'blood' cases cannot be submitted to the *khoro*, yet they are second in number to *mayuelo* cases. In theory, the procedure is that the victim, having notified his district head, runs to show his blood at the capital, messengers (*maharula*) of the queen are sent, not to institute an inquiry or conduct a trial, but to collect one goat from every married man in the district of the victim; and each *leharula* takes two goats for himself and gives the rest to the queen. We have never seen this procedure applied in practice; the danger of European intervention makes it wholly impracticable. Instead, the wounded person reports immediately to the district head, sometimes to the queen, or if the wound is not serious the parties settle the matter by *ku khumelwa*. The district head often arbitrates successfully; but he can neither try nor fine nor exact court fees. If the victim goes to the queen, she sends a *leharula* (and often more than one) who exacts one goat (the 'fee of the feet') from the assaulter and one from the victim (the 'stick for roasting meat') and should he settle the matter informally, for he cannot conduct a full-dress trial, he receives one further beast (the fine) from the wrong-doer. The latter is given to the queen; the goat given by the victim is killed for the *leharula*, who takes a hind leg to the queen's *khoro*, where it is eaten chiefly by the councillors; and the victim gets nothing. But if the *leharula* fails in his mission, which in practice means that the assaulter refuses to submit to him or denies his guilt, he is summoned to the *khoro* at the capital. There is no 'opening' fee, for 'blood' opens the *khoro*; sometimes the parties are ordered to settle the matter between themselves and sometimes the offender is fined one head of cattle, which goes to the queen, and one goat, which is killed for the *khoro*. Sometimes, however, a victim reports to the queen merely to obtain a letter to the Native Commissioner.

692 These general principles are subject in individual cases to many
683 variations which reflect the transitional nature of the procedure and the adjustments that are being made by the society. We have been able to observe the cases that came before the *khoro* far more closely than those settled privately. In one case where a father intervened in a fight between his son and his son's wife, the son in anger stabbed the father; the *khoro* ordered the parties to become reconciled by *ku khumelwa*, the son to beg pardon with a goat. In similar circumstances, where a stranger intervened, the husband was ordered to clear the grass in the queen's garage. In another case the husband wounded the mother of a youth whom he found with his wife, because the mother interfered in the ensuing quarrel between the husband and the youth; the *khoro* told the youth to beg pardon with three goats but fined the husband one head of cattle and one goat. While the *swiqiqini* (whistling ancestors) were performing at a religious ceremony, one of them, very much intoxicated, blew his whistle in public and tried to drag one of the women away to the bush. A district head, an initiated man, forcibly ejected the offender, who next

3: Krige E-5 (1928-1938)1938 FX14 Lovedu FX14

Highveld. When, after many private consultations with diviners, a man decides to make an accusation of witchcraft, he and the accused will *betcha* or lay a wager of money or cattle on the matter, after which, accompanied by a witness, the 'ears of the chief', supplied by the Head Kraal, they set out to consult a far-away smeller-out, nearly always a Shangana-Tonga who lives too far to know anything of the people concerned. Unless the smeller-out is able to give the totems of all members of the party and successfully find an object that has been hidden beforehand, they will pass on to another until some one suitable is found. The verdict of the smeller-out is taken to court where it is always accepted and the guilty party told to pay his wager, the modern counterpart of the death penalty of old. A distinction between murder and accidental homicide is everywhere found in the Lowveld, punishment for the latter being the handing over of a girl to the injured family. She never returns home, nor does any bride-price pass.

Bantu etiquette, which makes it impossible for a case to be reported to the chief except through a third party, generally among other Sotho tribes one or two specially appointed men, has in the Lowveld given rise to a rather more complicated system whereby each district has its 'mother' at the Head Kraal, through whom reports are made and actions brought. Where a person in one district has a case at the Head Kraal against some one in another district, the 'mother' of the complainant's district will approach the 'mother' of defendant's district to call his 'children' to the court, and various payments are connected with the system. Most of the important men living at or near the Head Kraal are such 'mothers', many having more than one district in their charge.

FAMILY AND CLAN. There is among Lowveld Sotho no term distinguishing the father's from the mother's side of the family, the word *malala* being used to denote all relatives whether on the father's side or the mother's; and in practice, whether at weddings or at working parties, both sets of relatives play an equally important, if sometimes different, part. A man inherits his totem and family name from his father, but in his education and social life his mother's people have great influence. Most children spend some years of their life with the